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United States
Circuit Court of Appeals
For the Ninth Circuit.

B. J. RUCKER,

Petitioner,

vs.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Respondent.

Transcript of Record.

UPON PETITION TO REVIEW ORDER OF THE UNITED STATES
BOARD OF TAX APPEALS.

FILED

JAN -2 1929

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

B. J. RUCKER,

Petitioner,

vs.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Respondent.

Transcript of Record.

UPON PETITION TO REVIEW ORDER OF THE UNITED STATES
BOARD OF TAX APPEALS.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[1*] DOCKET Number 2928.

B. J. RUCKER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

For Taxpayer:

HERBERT E. SMITH, Esq., W. P. BELL,
Esq., J. B. FOGARTY, Esq.

For Commissioner:

GRANVILLE BORDEN, Esq.

DOCKET ENTRIES.

1925.

Mar. 30—Petition received and filed.

Apr. 1—Copy of petition served on solicitor.

Apr. 1—Notification of receipt mailed taxpayer.

Apr. 21—Answer filed by solicitor.

Apr. 23—Copy of answer served on taxpayer—
Assigned to reserve calendar.

1927.

Apr. 13—Hearing date set June 14, 1927, at
County City Bldg., Seattle, Wash.

June 14—Hearing had before Mr. Morris on the
merits. Motion that 2928 and 2929
be consolidated and heard together.
Briefs due Sept. 15, 1927.

*Page-number appearing at the top of page of original certified Transcript of Record.

- Aug. 9—Transcript of hearing filed—June 14, 1927.
- Aug. 31—Motion for extension to Oct. 15th to file briefs filed by G. C. granted 9-3-27.
- Sept. 8—Brief filed by taxpayer.
- Sept. 29—Brief and finding filed by G. C.
- Nov. 30—Motion that time for filing proposed redetermination be set for a date subsequent to 12-20-27, filed by taxpayer.
- Dec. 27.—Findings of fact and opinion rendered—Mr. Morris—Judgment will be entered on 15 day notice.

1928.

- Feb. 8—Notice of settlement filed by taxpayer.
- Feb. 10—Notice allowing G. C. until 2-28-28 to file alternative settlement for hearing on 3-8-28. Failure to do so appeal set for 3-6-28.
- Feb. 11—Notice of settlement filed by G. C. Copy served 2-15-28.
- Feb. 11—Copy of proposed redetermination served on G. C.
- Mar. 8—Hearing had before Mr. Morris on settlement under Rule 50. Contested.
- Mar. 15—Transcript of hearing 3-8-28. See 2929.
- Mar. 20—Order of redetermination entered.
- Sept. 14—Petition for review by U. S. Cir. Ct. of Appeals 9th Cir., with assignments of error filed by taxpayer.
- Sept. 14—Proof of service filed.

Oct. 4—Praeipce of record filed.

Oct. 4—Proof of service filed by taxpayer.

Now, October 31, 1928, the foregoing docket entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[2] Filed Mar. 30, 1925. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 2928.

Appeal of B. J. RUCKER, of Lake Stevens, Wash.

PETITION.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter (IT:CR: G-6, GJG.) dated February 27, 1925, and as a basis of his appeal sets forth the following:

1.

The taxpayer is an individual partner in the copartnership of Rucker Bros., Lake Stevens, Washington, which is composed of said taxpayer and his brother, W. J. Rucker of Lake Stevens, Washington, each owning a one-half interest in said copartnership.

2.

The deficiency letter (a copy of which is attached) was mailed to the taxpayer on Feb. 27, 1925, and states a deficiency of \$3,463.21.

3.

The taxes in controversy are income taxes for the calendar year 1918 and are less than \$10,000, to wit, \$3,463.21.

[3] 4.

The determination of the tax is based on the following errors:

(NOTE—The additional assessment as computed by the Commissioner is based upon audits of the returns of B. J. Rucker and Rucker Bros. (a copartnership) made by an agent of the Bureau of Internal Revenue. The errors here to be stated appear in the report of the audit of Rucker Bros. (a copartnership) (No. 3049-W, IT:EN:T-AIW.) dated November 3, 1924, and signed by F. H. Goudy, Supervising Internal Revenue Agent).

ERROR #1—The Commissioner has added to the income of the partnership \$24,231.97, "Timber sold Everett Logging Co." (Schedule 1, item (g) of above mentioned report.)

ERROR #2—The Commissioner has computed the tax on the entire distributive share of B. J. Rucker in the income of Rucker Bros. (a partnership).

5.

The facts upon which the taxpayer relies as the basis of his appeal are as follows:

FACTS RE ERROR # 1.

This addition to the income of the partnership represents the total purchase price of certain tim-

ber sold by the Tulalip Co. (a corporation) to the Everett Logging Co. An initial payment of \$5,000 was made by the latter to the former in September, 1916. The balance of \$19,231.77 was paid presumably to C. W. Miley (a stockholder in the Tulalip Co.) some time prior to December 31, 1927. This timber was never owned by Rucker Bros. (a partnership) nor did they receive the proceeds from its sale, the final payment was made in 1917, and the sale became a closed transaction not later than December 31, 1917.

FACTS RE ERROR #2.

During the entire year 1918, B. J. Rucker was a married man living with his wife, Ruby Rucker, and said B. J. Rucker had no separate income in the year 1918.

[4] The taxpayer, in support of his appeal, relies upon the following propositions of law:

1. The income received by a corporation may not be included in the income of a partnership for the purpose of determining the income tax liability of the members thereof.
2. Any loss or gain resulting from a sale must be reported in the year in which the transaction occurred.
3. Under the law and decisions of the courts in the State of Washington, all the property and all the earnings of either spouse are presumed to be the property and earnings of the marital community, and the burden of proof is on any party claiming that said property or

income or any portion thereof is the separate property of one spouse or the other.

WHEREFORE, the taxpayer respectfully prays that this Board may hear and determine its appeal.

(Signed) HERBERT ELLES SMITH.

HERBERT ELLES SMITH (C. P. A.),

1124 White Bldg., Seattle, Wash.,

Attorney for the Taxpayer.

State of Washington,
County of Snohomish,—ss.

B. J. Rucker, being duly sworn, says that he is the taxpayer, named in the foregoing petition; that he has read the said petition, or had the same read to him, and is familiar with the statements therein contained, and that the facts therein stated are true, except such facts as are stated to be upon information and belief, and those facts he believes to be true.

(Signed) B. J. RUCKER.

Sworn to before me this 24 day of March, 1925.

[Seal]

(Signed) J. J. SHEEHAN,

Notary Public.

[5] COPY.

February 27, 1925.

IT:CR:G-6.

GJG.

Mr. B. J. Rucker,

Lake Stevens, Washington.

Sir:

Your claim for the abatement of \$12,591.20 income tax for the year 1918 has been examined.

A reaudit of your return for the year involved discloses an over-assessment amounting to \$9,127.99, as shown in Schedule 1 attached hereto. In the determination of this overassessment, due consideration was given to the statements set forth in your claim and appeal filed.

Your claim will therefore be rejected for \$3,463.21.

The Collector of Internal Revenue for your district will, upon the expiration of thirty days from the date of this letter, be officially notified of such rejection.

Upon receipt of notice and demand from that official, payment should be made to his office in accordance with the conditions of the notice.

Respectfully,

J. G. BRIGHT,

Deputy Commissioner.

By L. I. LOHMANN,

Head of Division.

Enclosure:

Schedule 1.

[6] B. J. Rucker. Year ended Dec. 31, 1918.

SCHEDULE 1.

Computation of Tax.

Net income disclosed by Revenue Agent's Supplemental Report dated Nov. 3, 1924.....			\$47,599.90
Less: Exemption.....			2,400.00
			<hr/>
Income subject to normal tax.....			\$45,199.90
Normal tax at 6% on.....	\$ 4,000.00	\$ 240.00	
Normal tax at 12% on.....	41,199.90	4,943.99	
Surtax on.....	46,000.00	4,610.00	
Surtax at 22% on.....	1,599.90	351.98	
			<hr/>
Total tax			\$10,145.97
Previously assessed:			
Original assessment April 29, 1919	\$ 3,082.24		
Additional assessment May 29, 1920	3,600.52		
Assessed March 1924, P. 4, L 8, Spl 10	12,591.20		
			<hr/>
Total taxes previously assessed.....			\$19,273.96
			<hr/>
Overassessed			9,127.99

Now, October 31, 1928, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[7] Filed Apr. 21, 1925. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 2928.

In re: Appeal of B. J. RUCKER, Lake Stevens,
Washington.

ANSWER.

The Commissioner of Internal Revenue by his attorney, A. W. Gregg, Solicitor of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraphs 1, and 3.

(2) Admits that the Commissioner has added to the income of the partnership of Rucker Brothers the amount of \$24,231.97, representing timber sold to the Everett Logging Company.

(3) Denies each and every other material allegation of fact contained in the petition.

PROPOSITIONS OF LAW.

(1) The Commissioner has not, since the enactment of the Revenue Act of 1924, determined a de-

ficiency in tax or proposed to assess an additional tax for 1918 against this taxpayer.

(2) Income for 1918 of the taxpayer and his wife has been properly adjusted by the Commissioner.

(3) Taxpayer's distributive share of the amount of \$24,231.97, representing the profit arising from the sale of the timber mentioned above, was properly included in taxpayer's gross income for 1918.

WHEREFORE it is prayed that the taxpayer's petition be dismissed and the appeal denied.

A. W. GREGG,
Solicitor of Internal Revenue,
Attorney for Commissioner of Internal Revenue.

Of Counsel:

A. H. FAST,
Special Attorney,
Bureau of Internal Revenue.

Now, October 31, 1928, the foregoing answer certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[8] A true copy.

Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET Nos. 2928 and 2929.

Promulgated December 27, 1927.

B. J. RUCKER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

W. J. RUCKER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

The respondent erred in adding to the income of the partnership, of which the petitioners were members, the gross proceeds from the sale of certain timber by the Tulalip Company to the Everett Logging Company in 1915.

Petitioner B. J. Rucker's distributive share of partnership income held to be separate property under the laws of the State of Washington, and therefore taxable to him.

J. B. FOGARTY, Esq., WILLIAM P. BELL, Esq.,
and HERBERT E. SMITH, C. P. A., for the
Petitioners.

GRANVILLE S. BORDEN, Esq., for the Respondent.

This is a proceeding for the redetermination of

deficiencies in income taxes in the amounts of \$3,463.21 and \$3,463.20 asserted by the respondent against B. J. Rucker and W. J. Rucker, respectively, for the year 1918.

On motion of the parties it was ordered that the cases of B. J. Rucker, Docket No. 2928, and W. J. Rucker, Docket No. 2929, be consolidated and heard jointly.

There are two issues raised by the pleadings, the first of which is identical in both cases, and the second is raised only by the petition of B. J. Rucker. The issues are:

[9] 1. Whether the respondent has erred in adding to the income of the partnership for the year in question the sum of \$24,231.97, representing timber sold to Everett Logging Company.

2. Whether the respondent was in error in computing the tax of B. J. Rucker, a married man, on the entire distributive share of the partnership of which he was a member.

FINDINGS OF FACT.

The petitioners herein comprise the copartnership known as Rucker Brothers, of Lake Stevens, Washington, each owning one-half interest in said copartnership.

C. W. Miley, who was president of the Tulalip Company, a corporation, during the year 1912, and succeeding years, purchased a quantity of timber in that year in his own name, for which he paid the sum of \$9,100. He in turn deeded it to the Tulalip Company for stock in that company, and that company thereupon sold it to the Everett Logging

Company in September, 1916, at a total sale price of \$24,231.77, receiving as an initial payment therefor in 1916 the sum of \$5,000 and in 1917 it received \$18,675.37 in monthly payments, and in February, 1918, it received as a final payment the sum of \$556.40. The timber in question was sold by the Tulalip Company to be paid for by the Everett Logging Company, as it was scaled and sold, and all of it was scaled and sold prior to December 31, 1917, with the exception of that represented by the payment of \$556.40 in 1918. The initial payment of \$5,000 was paid by the Everett Logging Company to the Tulalip Company in 1916 and the remaining balance was paid by checks which were sent to Miley, made payable to the company, [10] and he in turn endorsed them and cashed them, using the proceeds to pay off a debt that he had incurred in the company. The partnership of Rucker Brothers held fifty per cent of the stock of the Tulalip Company and Miley held fifty per cent.

B. J. Rucker was married in December, 1904, and he has lived continuously with his wife since that time. At the time of his marriage, Rucker owned a one-half interest in the copartnership of Rucker Brothers, the assets of which consisted of lands and town lots and some shares of stock in the Rucker Bank. Rucker Brothers were engaged in the real estate business at the time of Rucker's marriage, but in 1907 or 1908 the firm entered into the logging and sawmill business. The lands and town lots owned by the partnership at the time of Rucker's marriage were nonproductive properties from which

there has been no income from the time of his marriage to the present time. In fact they have paid in taxes several times what the properties would sell for to-day.

The profits earned by the partnership of Rucker Brothers have come from enterprises they have engaged in, such as timber and sawmill and logging operations for which the firm borrowed money and started. They have bought most of their timber on the installment plan making only a small initial payment therefor.

Rucker has kept no record of the property he had at the time he was married, nor of what he has accumulated subsequently to marriage.

Rucker Brothers purchased a quantity of timber from the Puget Mill Company in 1917 at a total purchase price of \$625,000 for which they paid \$5,000 in cash and the balance of \$620,000 in promissory notes [11] extending over a period of several years, all of which notes were signed by W. J. and B. J. Rucker for the partnership. A portion of that timber was later sold at a profit of upward of \$80,000. The portion of that timber that was not sold, was cut and sawed at their own mill and paid for as it was cut and removed.

During the period 1907 to 1916 the firm of Rucker Brothers borrowed several sums of money for use in the partnership.

All of Rucker's property at the time of his marriage was his equity in the partnership and all of his income has been from the partnership distributions.

Rucker Brothers filed an amended partnership return for the year 1918, showing therein \$95,699.27 as the total distributive income of the partnership for that year divided \$47,849.64 and \$47,849.63 for W. J. and B. J. Rucker respectively.

The individual (amended) return of B. J. Rucker for 1918 shows total net income from the partnership of Rucker Brothers to be \$47,849.63, from which a contribution of \$268.73 and \$10,957.58 were deducted, the latter amount being explained on the return as "net loss on dissolving corporation entirely owned by Rucker Brothers Partnership. Tulalip Company \$20,059.82, Rucker \$1,875.17, total \$21,915.17, individual claim one-half under section 214 (1) Div. (4)," leaving a net taxable income of \$36,623.32.

The individual (amended) return of W. J. Rucker for the year 1918 shows a total net income from the partnership of Rucker Brothers of \$47,849.64 from which the same deductions were taken as in B. J. Rucker's return with the same explanation, leaving a net taxable income for that year of \$36,623.32.

[12] The respondent determined the net income of each to be \$47,599.90.

OPINION.

MORRIS.—The first allegation of error is that the respondent added to the income of the partnership the sum of \$24,231.97 "timber sold Everett Logging Co." and the respondent has admitted the fact of such addition.

Certain timber was originally purchased by Miley in the spring of 1912 which he sold to the Tulalip Company and that company in turn sold it to the Everett Logging Company in 1916 for the total sum of \$24,231.97. The purchase price to the Everett Logging Company was paid \$5,000 in 1916, \$18,675.35 in 1917, and \$556.40 in 1918. All of the foregoing amounts were paid to Tulalip Company and Miley endorsed the checks received subsequently to the initial cash payment of \$5,000 in 1916 and made use of the proceeds to liquidate an indebtedness that he had incurred in the company.

While Rucker Brothers owned fifty per cent of the stock of the Tulalip Company and possibly there was some intermingling of accounts, the testimony is perfectly clear that the timber in question was owned by the Tulalip Company, sold by it, and further that the sale price was paid to it. We can see no justification for holding that the sum in question is taxable directly to the members of the firm of Rucker Brothers. Furthermore, even if we were to assume that the income was in fact taxable to the members of the firm of Rucker Brothers, we do not understand upon what theory in law it would be taxable to them in 1918, because it is clear that the transaction was consummated in 1916, and that all but a very small portion of the total sale price was received prior to December 31, 1917. We are of the opinion that the respondent erred in adding to the sum in question to the income of [13] the partnership of Rucker

Brothers in 1918, and we therefore sustain the contention of the petitioner.

The second allegation of error is urged by the petitioner B. J. Rucker, only, and it relates to the question of whether his distributive share of the profits of the partnership of which he is a member, constitutes community income or whether it constitutes separate income and hence taxable to himself. The facts and circumstances with respect to this issue are the same as those existing in the Appeal of B. J. Rucker, Docket No. 3509, wherein we held that the income in question was derived from his separate property and was taxable to him and we are therefore bound by our decision in that case with respect to the issue in the instant case.

Reviewed by the board.

Judgment will be entered on 15 days' notice under Rule 50.

Now, October 31, 1928, the foregoing findings of fact and opinion certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[14] A true copy.

Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 2928.

B. J. RUCKER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER OF REDETERMINATION.

Pursuant to the Board's findings of fact and opinion, promulgated December 27, 1927, the parties filed proposed redeterminations which came on for hearing on settlement, March 8, 1928, at which time the proposed redeterminations were taken under advisement. Due consideration having been given thereto, and it appearing that petitioner has failed to compute the deficiency in accordance with our findings of fact and opinion, and the respondent's computation showing a correct tax liability of \$6,357.50, tax paid of \$4,776.66, and previous assessments of \$19,273.96 less \$1,906.10 previously allowed, it is

ORDERED AND DECIDED: That, upon redetermination, the correct tax liability for 1918 is \$6,357.50, the tax paid is \$4,776.66, and the unpaid portion of the tax liability is \$1,580.84; the previous assessments are \$19,273.96 less \$1,906.10 previously

allowed and the unpaid assessment to be abated is \$11,010.36.

Entered: Mar. 20, 1928.

(Signed) LOGAN MORRIS,
Member U. S. Board of Tax Appeals.

Now, October 31, 1928, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[15] Filed Sep. 14, 1928. United States Board of Tax Appeals.

In the United States Circuit Court of Appeals for the Ninth Circuit.

——— Term, 1928.

No. —.

B. J. RUCKER,

Petitioner,

vs.

DAVID H. BLAIR, Commissioner of Internal Revenue,

Respondent.

PETITION TO REVIEW DECISION OF
UNITED STATES BOARD OF TAX AP-
PEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit :

Your petitioner, B. J. Rucker, respectfully rep-
resents that he is a resident and citizen of the city
of Everett, County of Snohomish, and State of
Washington.

I.

NATURE OF CONTROVERSY.

1. On the twenty-seventh day of December, 1927, the United States Board of Tax Appeals promulgated its findings and opinion in the case of B. J. Rucker, petitioner, vs. David H. Blair, Commissioner of Internal Revenue, respondent, Docket #2928, in which opinion it was held that all of petitioner's distributive share of the income of Rucker Bros. partnership for the year 1918, was petitioner's separate income and no part thereof was community income of said petitioner and his wife, Ruby Rucker.

2. On March 20, 1928, the United States Board of Tax Appeals entered its final order of redetermination of the tax liability of said petitioner for the year 1918, based on said opinion.

II.

ORDER OF REVIEW.

A review of the decision of the United States Board of Tax Appeals in the above-entitled pro-

ceeding is sought by the United States Circuit Court of Appeals for the Ninth Circuit.

III.

ASSIGNMENTS OF ERROR.

Your petitioner says that in the record and proceedings of said United States Board of Tax Appeals, in the above-entitled cause and in the final order entered therein, there is manifest error, and for error petitioner assigns the following:

1. The Board erred in holding that all of the said petitioner's distributive share of the income of Rucker Bros. for the year 1918 was the separate income of the petitioner.

[16] 2. The Board erred in failing to hold that all of the said petitioner's distributive share of the income of Rucker Bros. for the year 1918 was community income of the said petitioner and his wife.

3. The said findings of fact promulgated by the Board are concurred in by the petitioner, but the Board erred in its conclusions.

Your petitioner, therefore, prays for review, by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the United States Board of Tax Appeals in the above-entitled case, in accordance with the Act of Congress in such case made and provided, and that the Clerk of said Board be directed to transmit and deliver to the Clerk of said court certified copies of all and every of the documents listed and set forth in the rules adopted by said United States Circuit Court of

Appeals for the Ninth Circuit providing for the presentation of petitions for review of decisions.

And he will ever pray, etc.

B. J. RUCKER.

State of Washington,
County of Snohomish,—ss.

Personally appeared before me the subscribed, a notary public in and for said county, B. J. Rucker, petitioner above named, who, being duly sworn according to law, does depose and say that the facts set forth in the foregoing petition are true and correct.

B. J. RUCKER.

Sworn and subscribed before me this 6th day of Sept., 1928.

W. P. BELL,
Notary Public.

Now, October 31, 1928, the foregoing petition for review certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[17] Filed Oct. 4, 1928. United States Board of Tax Appeals.

Before the United States Board of Tax Appeals.

DOCKET No. 2928.

B. J. RUCKER

vs.

COMMISSIONER OF INTERNAL REVENUE.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days from the date of the filing of the petition for review in the above stated case, transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.
2. Findings of fact, opinion, and decision of the Board.
3. Order of redetermination and final decision.
4. Petition for review.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

W. P. BELL.
W. P. BELL,
Everett, Washington,
Attorney for B. J. Rucker.
J. B. FOGARTY.
J. B. FOGARTY,
Everett, Washington,
Attorney for B. J. Rucker.

September 28, 1928.

[18] Filed Oct. 4, 1928. United States Board of Tax Appeals.

In the United States Circuit Court of Appeals for the Ninth Circuit.

——— Term, 1928.

DOCKET No. 2928.

B. J. RUCKER,

Petitioner,

vs.

DAVID H. BLAIR, Commissioner of Internal Revenue,

Respondent.

NOTICE OF FILING AND SERVICE OF
PRAECIPE FOR TRANSCRIPT OF RECORD.

To David H. Blair, Commissioner of Internal Revenue:

You are hereby notified that the petitioner above named has filed with the United States Board of Tax Appeals his praecipe for the record of certain parts of the proceedings in the above-entitled action, to be used in the review of the decision of the United States Board of Tax Appeals in the United States Circuit Court of Appeals for the Ninth Cir-

cuit, and a full, true and correct copy of said praecipe is herewith served upon you.

W. P. BELL,
W. P. BELL,
Everett, Wash.,
Counsel for Petitioner.
J. B. FOGARTY,
J. B. FOGARTY,
Everett, Wash.,
Counsel for Petitioner.

Service of the foregoing notice is hereby admitted and a copy thereof received together with copy of praecipe in the above stated case.

Dated this 3d day of October, 1928.

C. M. CHAREST.
M.

Now, October 31, 1928, the foregoing praecipe and notice of filing certified from the record as a true copy.

[Seal] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 5662. United States Circuit Court of Appeals for the Ninth Circuit. B. J. Rucker, Petitioner, vs. David H. Blair, Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review Order of the United States Board of Tax Appeals.

Filed December 20, 1928.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

